12328 (78813) PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of: K. Scott Kammerer

Title: SWAB WITH PULL-TRUDED FIBER TIP

Serial No.: 09/621,722

Filed: July 24, 2000

Examiner: Laura C. Cole

Art Unit: 1744

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APPLICANT'S BRIEF ON APPEAL UNDER 37 C.F.R. §1.192

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APPEAL BRIEF

REAL PARTY IN INTEREST

Illinois Tool Works Inc., the Assignee, is the real party in interest

RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

STATUS OF CLAIMS

Claims 1-3 and 6-14 are pending. These claims having been finally rejected are now on appeal.

Claims 4-5 were previously cancelled. No other claims are pending or have been withdrawn.

STATUS OF AMENDMENTS

No amendments to pending claims 1-3 or 6-14 were filed after the date of the final rejection.

SUMMARY OF THE INVENTION

The present invention is directed to a swab (10) for cleaning for example, fiber optic connectors and electrical and electro-mechanical components (spec. p. 2, lines 24-25). The swab includes an elongated handle (14) (spec. p. 4, line 9) having a cleaning head end (20) and a grasping end (30), which cleaning head end defines a securing region (at 22) (spec. p. 4, lines 7-14). The swab further includes a cleaning tip (16) that is formed from a plurality of extruded, compressed fibers, formed by pulling the fibers through a die compressing the fibers into a substantially rigid, elongated cleaning head

(referred to as pull-truding, *see,* spec. p. 4, lines 14-25). The cleaning head is secured to the handle at the cleaning head end, and the handle and cleaning tip define a longitudinal axis.

ISSUES PRESENTED

1. Whether claim 1 is unpatentable under 35 U.S.C. § 102(b) as anticipated by Goldman, U.S. Patent No. Re. 16,869.

2. Whether claim 2 is unpatentable under 35 U.S.C. § 103(a) over Goldman.

3. Whether claims 3 and 7 are unpatentable under 35 U.S.C. § 103(a) over Goldman in view of Varma, U.S. Patent No. 6,269,515.

4. Whether claim 6 is unpatentable under 35 U.S.C. § 103(a) over Goldman in view of Kachigian, U.S. Patent No. 5,084,005.

5. Whether claims 8-9 and 13-14 are unpatentable under 35 U.S.C. § 103(a) over Goldman in view of Bozarjian, U.S. Patent No. 6,187,104.

6. Whether claim 10 is unpatentable under 35 U.S.C. § 103(a) over Goldman in view of Gradone, U.S. Patent No. 3,712,296.

7. Whether claims 11-12 are unpatentable under 35 U.S.C. § 103(a) over Goldman in view of in view of Gradone and further in view of Lisowski, U.S. Patent No. 5,937,473.

GROUPING OF CLAIMS

Claims 1-3 and 6-14 are pending in the present application and are on appeal. All of the claims pending and on appeal stand or fall together.

ARGUMENT

I. Summary of the Prior Art Applied

A. Goldman, U.S. Patent No. Re. 16,869

The Examiner characterizes Goldman as disclosing a manicuring instrument having a handle that defines a longitudinal axis and a includes cleaning head end (near the ferrule) and a grasping end. The Examiner has stated that the cleaning head end defines a securing region, and that a cleaning tip is formed of a plurality of fibers that are rigid. The Examiner states further that the cleaning head is secured to the handle at the cleaning head end and that the handle and tip define a longitudinal axis, referring to figures 1-4.

B. Varma, U.S. Patent No. 6,269,515

The Varma patent is characterized as disclosing an apparatus for cleaning an electrode that includes a handle that defines a longitudinal axis having a cleaning head and grasping end, and in which the handle is a hollow tubular member defining a central bore and the cleaning tip is formed with dimensions to fit within the bore. The Examiner further characterizes Varma as showing a swab that is non-bending.

C. Kachigian, U.S. Patent No. 5,084,005

The Kachigian patent is cited for its disclosure of a swab that includes a handle, a cleaning head, a grasping end, a securing region, and a cleaning tip formed of a plurality of fibers. The Examiner states further that Kachigian discloses that a swabbing tip may be secured to a rigid handle structure by ultrasonic welding.

D. Bozarjian, U.S. Patent No. 6,187,104

The Bozarjian patent is characterized for its disclosure of a cleaning implement and method that has a tether secured to the handle-grasping end, which tether is secured through a handle bore. The Examiner further characterizes this patent as showing that a tether may be removable or permanent.

E. Gradone, U.S. Patent No. 3,712,296

The Gradone patent is cited for its disclosure of a swab device that has a handle, a cleaning head end, a grasping end, a securing region and a cleaning tip. The Examiner states further that Gradone discloses a grip portion mounted externally on the handle that

is provided so as to avoid human contact with the handle, which is desired in the medical field.

F. Lisowski, U.S. Patent No. 5,937,473

The Lisowski patent is cited for its teaching of a tether or "wrist loop" that is disposed between a grip portion and handle.

II. The Present Invention - Claim 1 and its Dependent Claims

The invention as defined by claim 1 is directed to a cleaning swab. The swab includes an elongated handle (that defines a longitudinal axis), having a cleaning head end and a grasping end. The cleaning head end defines a securing region.

The swab includes a cleaning tip. The cleaning tip is formed from a plurality of extruded, compressed fibers. The head is formed by pull-truding or pulling the fibers through a die compressing the fibers into a substantially rigid, elongated cleaning head. The cleaning head is secured to the handle at the cleaning head end.

The dependent claims (claims 2-3 and 6-14) further define the swab as having a polyester fiber head. The dependent claims further define that the cleaning tip fits snuggly into a bore in the handle at the securing region, and that the cleaning tip is secured to the handle by ultrasonic welding. Further, the dependent claims provide for the swab having a hollow tubular member handle with the cleaning tip having being a shape and dimension for inserting into the handle bore.

Other features of the swab include a tether secured to the handle grasping end, the tether being inserted into the handle bore, and a grip mounted externally of the handle (with or without the tether).

The swab is a cleaning device that can be used for cleaning a variety of delicate, electrical and electro-mechanical devices, and particularly fiber optic connectors. The swab is configured so that it can be used to clean narrow or small spaces, without degrading when cleaning slots and the like in devices such as fiber optic connectors, as well as junction regions of walls and/or surfaces. Because the size and shape of the cleaning head can be varied, the swab is also particularly well suited for use in cleaning

fiber optic connector ferrules and the like. The swab is used to remove contaminants, including particulate and light oils without leaving any of its own debris, such as particulate matter.

The cleaning head is a pull-truded fibrous material, rather than a gathered material. Pull-truding is similar to an extrusion process except that rather than pushing the material through a die, the material is pulled through the die. The head material (which can be, for example, a polyester material) is pulled through the die to form the cleaning head. Pulling the fibrous material compresses the fibers forming a relatively rigid composition. The tip or head can then be cut to form various shapes, such a flat head, an angled head, or any other desired shape. The cleaning head can be fabricated or pulled so that it can, dimensionally, snuggly fit within (as by inserting into) the bore of the handle.

III. The Examiner's Rejections

The rejections discussed in this section are those rejections set forth in the Action mailed December 5, 2003, which action was made final.

A. Rejection of Claim 1 under 35 U.S.C. §102(b) (Rejection No. 1)

The Examiner has finally rejected claim 1 as anticipated by the Goldman patent. The Goldman patent is characterized as disclosing a manicuring instrument having a handle that defines a longitudinal axis and includes a cleaning head end (near the ferrule) and a grasping end. The Examiner states that the cleaning head end defines a securing region, and that a cleaning tip is formed of a plurality of fibers that are rigid. Further, it is stated that the cleaning head is secured to the handle at the cleaning head end, and that the handle and tip define a longitudinal axis, referring to figures 1-4.

The Examiner makes the contention that the fibers forming the head are compressed by the ferrule and are made rigid thereby. As set forth in the rejection, the cleaning tip of Goldman is "a plurality of compressed fibers that are a portion of a 'substantially rigid, elongated cleaning head.'" Action of December 5, 2003, page 6, para 9A.

B. Rejection of Claim 2 under 35 U.S.C. §103(a) (Rejection No. 2)

Next, claim 2 has been finally rejected under 35 U.S.C. §103(a) as obvious over Goldman. The Examiner has taken the position that even though Goldman fails to disclose the use of polyester as the "bristle" material, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use polyester.

C. Rejection of Claims 3 and 7 under 35 U.S.C. §103(a) (Rejection No. 3)

Claims 3 and 7 have been finally rejected under 35 U.S.C. §103(a) as obvious over Goldman in view of Varma. The Examiner's position is that combining Varma's disclosure of a hollow tubular handle having a central bore with a cleaning tip that is dimensioned to fit within the bore, with Goldman's manicuring instrument, and modifying Goldman's device to include the securing arrangement of the Varma device to eliminate the ferrule, would have been obvious to one of skill in the art at the time of the invention.

D. Rejection of Claim 6 under 35 U.S.C. §103(a) (Rejection No. 4)

Next, the Examiner has finally rejected claim 6 under 35 U.S.C. §103(a) as obvious over Goldman in view of Kachigian. The Examiner has concluded that combining Kachigian's disclosure of a swabbing tip may be secured to a rigid handle structure by ultrasonic welding would have been obvious to one of ordinary skill in the art, to keep debris, dust particles, or bacteria from the cleaning tip which can be disruptive in electromechanical components.

E. Rejection of Claims 8-9 and 13-14 under U.S.C. §103(a) (Rejection No. 5)

Claims 8-9 and 13-14 have been finally rejected under 35 U.S.C. §103(a) as obvious over Goldman in view of Bozarjian, asserting that it would have been obvious for one of ordinary skill in the art to apply Bozarjian's removable or permanent tether to the swab of Goldman so that the swab is always nearby or on hand when cleaning.

F. Rejection of Claim 10 under U.S.C. §103(a) (Rejection No. 6)

Next, the Examiner has finally rejected claim 10 under 35 U.S.C. §103(a) as obvious over Goldman in view of Gradone, the position being taking that combining the grip portion of Gradone with the swab of Goldman to avoid human contact with the handle, which is desired in the medical field, would have been obvious to one of skill in the art to avoid the possibility of transferring dust or human oils when working with electro-mechanical devices in a clean room.

G. Rejection of Claims 11-12 under U.S.C. §103(a) (Rejection No. 7)

Last, claims 11-12 have been finally rejected under 35 U.S.C. §103(a) as obvious over Goldman in view of Gradone and further in view of Lisowski, the assertion being that combining the tether positioned between an external gripping portion and the handle would have been obvious to one of ordinary skill in the art so that the swab will always be nearby, hooked, or worn around the wrist.

IV. The Goldman Patent Does Not Anticipate Claim 1 Because it Fails to Disclose Each and Every Element of Claim 1 (Rejection No. 1)

In order for a reference to anticipate a claimed invention, 35 U.S.C. §102(b) requires that each and every element be disclosed in a single reference. That is, "every element of the claimed invention must be identically shown in a single reference." In re Bond, 910 F.2d 831, 832, 15 USPQ2d 1566, 1567 (Fed. Cir. 1990). "In determining whether a patented invention is anticipated, the claims are read in the context of the patent specification in which they arise and in which the invention is described. Glaverbel Societe Anonyme v. Northlake Mktg. and Supply, Inc., 45 F.3d 1550, 1554, 33 USPQ2d 1496, 1498 (Fed. Cir. 1995).

Specifically, it is Applicant's position that the Goldman patent fails to disclose a cleaning tip that is formed from a plurality of extruded, compressed fibers that are pulled through a die compressing the fibers into a substantially rigid, elongated cleaning head. Rather, Goldman shows a manicuring instrument that has bunched bristles intended to,

> "enter between the cuticle along the top of the nail and slightly raise the same without injury to either the nail or the cuticle.

> The cut ends of the individual stubby bristles present abrading edges which serve to abrade and wear away portions of dry cuticle while the body of bristles serves to remove and brush away the abraded particles."
> Goldman, lines 59-68.

The bristles of the Goldman manicuring instrument brush end are contained or held by a ferrule. There is no disclosure of a pull-truded (akin to "pulling" an otherwise extruded element), fibrous cleaning tip that is substantially rigid. Rather, Goldman discloses a tightly secured brush, not that different from tightly packed paint brushes or the like, but completely different from an extruded fibrous cleaning tip.

Even if one were to "discount" the forming "method" as has been urged in the Action of December 5, that is, discount the pull-truding of the fibers, it is applicant's position that the Goldman patent still fails to disclose a cleaning tip that is formed from a plurality of extruded, compressed fibers. As such, applicant submits that the rejection of claim 1 under § 102(b) as anticipated by the Goldman patent is improper and should be withdrawn because Goldman fails to disclose all of the elements of claim 1.

V. The Goldman Patent, Standing Alone, Fails to Suggest, Motivate or Teach the Invention as Recited in Claim 2 (Rejection No. 2)

As to the rejection of claim 2 as unpatentable over Goldman, it is applicant's position that claim 2 is allowable for the same reasons that claim 1 is allowable over the Goldman patent. That is, because Goldman fails to disclose a cleaning tip that is formed from a plurality of extruded, compressed fibers, it cannot have, without more, rendered the claimed invention obvious to one of skill in the art at the time of the invention.

The Patent Office has the burden to establish a prima facie case of obviousness of the claimed subject matter as a whole within the meaning of § 103. In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988), citing, In re Piasecki, 745 F.2d 1468, 1471-72, 223 U.S.P.Q. 785, 787-88 (Fed. Cir. 1984). Further, the burden is only satisfied by illustrating a teaching in the prior art or generally available knowledge that would lead one skilled in the art to combine references. In re Lalu, 747 F.2d 703, 705, 223 U.S.P.Q. 1257, 1258 (Fed. Cir. 1984). This burden has not been adequately met.

Taking at face value the substitution of polyester for the unidentified bristles disclosed in Goldman, it still would not result in the pull-truded fibrous cleaning tip.

Rather, what would result is a secured gathering or bunching of otherwise loose polyester fibers (or hairs) held by, for example, a ferrule or band. Thus, the claimed invention would not be the outcome of such a combination.

The arguments set forth in the Action rest on completely discounting or disregarding the pull-truded limitation as a structural or functional limitation of the claimed invention. For Example, in the Action, it is argued that "[t]he "pulltruding" or "pulling fibers through a die" limitation is a product-by-process claim. MPEP section 2113 recites, "Product-by-Process claims are not limited to the manipulations of the recited steps, only the structure implied by the steps." Goldman discloses 'a substantially rigid, elongated cleaning head.'" Applicant has, however, set forth on numerous occasions during prosecution of this application, in very definite and positive recitation, that the pull-truded limitation is to be considered a structural limitation of the claim and not merely a product-by-process limitation. That is, the "pull-truded" nature of the cleaning head is in fact a structural or physical characteristic of the tip.

However, even taking the Examiner's "discounted" position at face value, the Goldman patent simply does not disclose a substantially rigid fibrous cleaning tip as it is to be construed in light of the specification. In summary, Applicant submits that the Action fails to set forth motivation, teaching or suggestion to meet the burden for a showing of obviousness.

VI. The Goldman Patent, In Combination With Any of the Art of Record Fails to Render Any of Claims 3 and 6-14 Obvious Because Any Such Combination Fails to Suggest, Motivate or Teach the Invention as Recited in Those Claims (Rejection Nos. 3-7)

It is applicant's position that claims 3 and 6-14 are allowable for the same reasons that claims 1 and 2 are allowable over the Goldman patent. Specifically, in that the Goldman patent fails to disclose a cleaning tip that is formed from a plurality of extruded, compressed fibers, it cannot, even in any of the combinations cited in the Action, without more, render the claimed invention obvious to one of skill in the art at the time of the invention.

Without belaboring the failings of the cited references, even assuming for the sake of argument that each of the secondary references does in fact disclose that which is asserted in the Action, Applicant submits that because the Goldman patent fails to disclose the elements of the claimed invention (as discussed above), the depending claims are allowable over the art of record.

VII. Other Considerations

Even if one were to consider the device of Goldman structurally, "close enough" to the claimed swab, the Goldman device simply stated, does not address the problems solved by the present swab. The pull-truded swab is used for cleaning a variety of delicate, electrical and electro-mechanical devices, and particularly fiber optic connectors. The swab is configured so that it can be used to clean narrow or small spaces.

The cleaning head is a long, thin element that, because it is rigid, can be used to "get into corners" to clean these delicates devices. For example, as provided in the specification, a range of sizes for an exemplary cleaning head is a diameter of about 1.0 to 3.0 mm and a length of about 10 to 30 mm (a length to diameter ratio of about 10), and in a present swab, a diameter of about 1.25 mm and a length of about 25 mm (for a length to diameter ratio of 20). Would the "bunched fiber" configuration of the Goldman device function at a length to diameter ratio of 20, or even 10 – Applicant submits that it would not.

Moreover, the Goldman patent specifically states that the instrument is formed with "stubby bristles" which are described as "short thick bristles" (lines 49-50). This is quite unlike and in fact opposite of the elongated pull-truded cleaning head.

CONCLUSION

In conclusion, Applicant submits that the claims 1-3 and 6-14 as presently pending are neither anticipated by the art of record, nor would have been obvious to one of skill in the art, even given the cited references, because of the failure of the primary reference, namely, the Goldman patent, to disclose the elements of independent claim 1. To this end, Applicant respectfully requests that the Board reverse the decision of the Examiner finally rejecting Claims 1-3 and 6-14 and allow the application to move on to allowance and issue.

Respectfully submitted,

WELSH & KATZ, LTD.

By: _____

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Registration No. 37,963

Dated: April 22, 2004

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APPENDIX - CLAIMS ON APPEAL

1. A swab, comprising:

a handle defining a longitudinal axis, the handle being elongated and having a cleaning head end and a grasping end, the cleaning head end defining a securing region; and

a cleaning tip, the cleaning tip being formed from a plurality of extruded, compressed fibers formed by pulling the fibers through a die compressing the fibers into a substantially rigid, elongated cleaning head, the cleaning head being secured to the handle at the cleaning head end, the handle and cleaning tip defining a longitudinal axis.

2. The swab in accordance with claim 1 wherein the cleaning tip is formed from polyester fibers.

3. The swab in accordance with claim 1 wherein the cleaning tip fits snuggly into a bore in the handle at the securing region.

6. The swab in accordance with claim 1 wherein the cleaning tip is secured to the handle by ultrasonic welding.

7. The swab in accordance with claim 1 wherein the handle is a hollow tubular member defining a central bore and the cleaning tip is formed having a shape and a dimension for inserting into the handle bore forming a non-bending swab.

8. The swab in accordance with claim 1 including a tether secured to the handle grasping end.

9. The swab in accordance with claim 8 wherein an end of the tether is inserted into the handle bore.

10. The swab in accordance with claim 1 including a grip portion mounted externally of the handle.

11. The swab in accordance with claim 10 including a tether mounted to the swab at the grip portion.

12. The swab in accordance with claim 11 wherein a portion of the tether is disposed between the grip portion and the handle.

13. The swab in accordance with claim 8 wherein the tether is permanently mounted to the handle.

14. The swab in accordance with claim 8 wherein the tether is removably mounted to the handle.

TABLE OF AUTHORITIES

TRANSMITTAL OF APPEAL BRIEF (Large Entity)	Docket No. 12328 (6365/77813)

In re Application Of: **K. Scott Kammerer**

Serial No.	Filing Date	Examiner	Group Art Unit
09/621,722	**07/24/2000**	**Laura C. Cole**	**1744**

Invention: **SWAB WITH PULL-TRUDED FIBER TIP**

TO THE COMMISSIONER FOR PATENTS:

Transmitted herewith in triplicate is the Appeal Brief in this application, with respect to the Notice of Appeal filed on

The fee for filing this Appeal Brief is: **$330.00**

☒ A check in the amount of the fee is enclosed.

☐ The Director has already been authorized to charge fees in this application to a Deposit Account.

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Dated: **04/22/2004**

Mitchell J. Weinstein, Esq.
Reg. No, 37,963

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FEE TRANSMITTAL for FY 2004

Effective 10/01/2003. Patent fees are subject to annual revision.

☐ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT ($) **$330.00**

Complete if Known	
Application Number	09/621,722
Filing Date	09/621,722
First Named Inventor	K. Scott Kammerer
Examiner Name	Laura C. Cole
Art Unit	1744
Attorney Docket No.	12328 (6365/78813)

METHOD OF PAYMENT *(check all that apply)*

☒ Check ☐ Credit card ☐ Money Order ☐ Other ☐ None

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Deposit Account Number: 23-0920

Deposit Account Name: Welsh & Katz, Ltd.

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FEE CALCULATION

1. BASIC FILING FEE

Large Entity Fee Code	Large Entity Fee ($)	Small Entity Fee Code	Small Entity Fee ($)	Fee Description	Fee Paid
1001	770	2001	385	Utility filing fee	
1002	340	2002	170	Design filing fee	
1003	530	2003	265	Plant filing fee	
1004	770	2004	385	Reissue filing fee	
1005	160	2005	80	Provisional filing fee	

SUBTOTAL (1) ($)

2. EXTRA CLAIM FEES FOR UTILITY AND

	Extra Claims			Fee from below	Fee Paid
Total Claims		-20** =	0	X	= 0.00
Independent Claims		- 3** =	0	X	= 0.00
Multiple Dependent					=

Large Entity Fee Code	Large Entity Fee ($)	Small Entity Fee Code	Small Entity Fee ($)	Fee Description
1202	18	2202	9	Claims in excess of 20
1201	86	2201	43	Independent claims in excess of 3
1203	290	2203	145	Multiple dependent claim, if not paid
1204	86	2204	43	** Reissue independent claims over original patent
1205	18	2205	9	** Reissue claims in excess of 20 and over original patent

SUBTOTAL (2) ($) $0.00

***or number previously paid, if greater; For Reissues, see above*

FEE CALCULATION (continued)

3. ADDITIONAL FEES

Large Entity Fee Code	Large Entity Fee ($)	Small Entity Fee Code	Small Entity Fee ($)	Fee Description	Fee Paid
1051	130	2051	65	Surcharge - late filing fee or oath	
1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet	
1053	130	1053	130	Non - English specification	
1812	2,520	1812	2,520	For filing a request for *ex parte* reexamination	
1804	920*	1804	920*	Requesting publication of SIR prior to Examiner action	
1805	1,840*	1805	1,840*	Requesting publication of SIR after Examiner action	
1251	110	2251	55	Extension for reply within first month	
1252	420	2252	210	Extension for reply within second month	
1253	950	2253	475	Extension for reply within third month	
1254	1,480	2254	740	Extension for reply within fourth month	
1255	2,010	2255	1,005	Extension for reply within fifth month	
1401	330	2401	165	Notice of Appeal	
1402	330	2402	165	Filing a brief in support of an appeal	330.00
1403	290	2403	145	Request for oral hearing	
1451	1,510	1451	1,510	Petition to institute a public use proceeding	
1452	110	2452	55	Petition to revive - unavoidable	
1453	1,330	2453	665	Petition to revive - unintentional	
1501	1,330	2501	665	Utility issue fee (or reissue)	
1502	480	2502	240	Design issue fee	
1503	640	2503	320	Plant issue fee	
1460	130	1460	130	Petitions to the Commissioner	
1807	50	1807	50	Processing fee under 37 CFR § 1.17(q)	
1806	180	1806	180	Submission of Information Disclosure Statement	
8021	40	8021	40	Recording each patent assignment per property (times number of properties)	
1809	770	2809	385	Filing a submission after final rejection (37 CFR § 1.129(a))	
1810	770	2810	385	For each additional invention to be examined (37 CFR § 1.129(b))	
1801	770	2801	385	Request for Continued Examination (RCE)	
1802	900	1802	900	Request for expedited examination of a design application	

Other fee (specify) _____

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SUBTOTAL (3) ($) $330.00

SUBMITTED BY

Complete (if applicable)

Name (Print/Type)	Mitchell J. Weinstein, Esq.	Registration No. (Attorney/Agent)	37,963	Telephone	(312) 655-1500
Signature				Date	04/22/2004

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